

East Longmeadow Conservation Commission

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*Michael Carabetta, chair
Thomas O'Brien, vice chair
Craig Jernstrom, clerk
René Reich-Graefe*

*Robert Sheets
William Arment
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Minutes of September 14, 2016

Present were: Chair, Michael Carabetta; Clerk, Craig Jernstrom, Rene Reich-Graefe, William Arment, Robert Sheets and Anthony Zampiceni. Thomas O'Brien was not present.

Public Meeting Request for Determination of Applicability – Ronald & Lind Boutin, 23 Ruffino Road

Chair, Michael Carabetta opened the public meeting for 23 Ruffino Road. Clerk, Craig Jernstrom read the legal notice into the record.

Mr. Carabetta asked the applicant to explain what it is he would like to do.

Applicant, Ronald Boutin said that he is looking to do an addition off the back of his garage. He said that he was advised by the Building Inspector that going before the Commission was probably his best option to prevent any additional problems. Mr. Boutin said that he is as far away from his wetland boundary markers as he can possibly be with the addition.

Mr. Carabetta said he is not actually closer than the house is already.

Mr. Boutin said that he would be off the back of the garage but the way the house is positioned he is in the corner where the markers are the furthest away and was told that he was still within their building window.

Mr. Carabetta said it falls within the jurisdiction of the Commission but doesn't feel that there is anything for them to look at.

Mr. Jernstrom said when he talked with Mr. Boutin earlier and discussed the project the entire house is within the 100 foot buffer zone and the 50 foot buffer zone, he believes is somewhere around 25 feet or so off the back of the house. He said virtually anything Mr. Boutin needed to do he would have to come in and talk with the Commission.

Mr. Boutin said that he wasn't aware of the 100 foot buffer versus the 50 foot buffer and he thought being outside the 50 foot buffer he was all set because that was what was explained to him originally.

Mr. Carabetta said because the whole subdivision was under an Order of Conditions it was brought to the Commission's attention. He addressed the Commission for any questions or comments.

Mr. Reich-Graefe asked if the driveway will also be extended.

Mr. Boutin said no that it will only be storage off the back for a boat during the winter and lawn equipment during the summer.

Mr. Jernstrom asked if the foundation will have a basement in it. Mr. Boutin said that it will be just a frost wall about 5 feet down. Mr. Jernstrom said that his only concern would be that erosion controls are in place during construction. Mr. Boutin said that he intends to do a silt fence along the boundaries.

Mr. Arment suggested a filter sock as an easier erosion control than a silt fence or hay bales.

Mr. Boutin said he will look into the sock and probably will not start the project until spring time.

There being no further discussion and upon motion duly made by William Arment and seconded by Anthony Zampiceni, the Commission voted unanimously (6-0) to close the public meeting. Upon motion duly made by William Arment and seconded by Anthony Zampiceni, the Commission voted unanimously (6-0) to issue a negative determination that the work described in the Request is within the Buffer Zone but will not alter an Area subject to protection under the Act. The work will not require the filing of a Notice of Intent subject to erosion controls being placed during construction.

Public Hearing Notice of Intent – Michael Torcia, Euclid Avenue, Parcel 2B 11 A

Chair, Michael Carabetta said that the public hearing for Michael Torcia regarding Euclid Avenue parcel 2B 11 A will be continued pending more information requested by DEP with regard to the project.

Upon motion duly made by William Arment and seconded by Robert Sheets, the Commission voted unanimously (6-0) to continue the hearing to September 28, 2016 at 6:00 p.m.

Discussion with Attorney Larry Levine regarding for Orders of Conditions & Deed Restrictions

Attorney Levine said that Michael Kane is a client of his and recently the Commission issued an Order of Conditions to him along with Special Conditions. He said in those conditions it states that a Deed Restriction also needs to be recorded repeating exactly what the Special Conditions state within the Order. Attorney Levine said that he could prepare exactly what is in the requirement of the Commission, he could record the Order of Conditions and he could record the very next instrument and it would be the exact same wording that's in the Special Conditions. He said putting on a separate declaration of restrictions doesn't add anything to the disclosure to the buyers and the burden falls on the lawyers to educate and determine whether something is applicable. Attorney Levine said in Michael Kane's situation there is a requirement for a deed notation and it wouldn't be a deed notation. He would do a declaration of restrictions and he would repeat the exact wording that is in there. He said when Mr. Kane sells the house the deed will have very similar language that is already there and it's up to the buyer's lawyer to educate the people what it means. Attorney Levine said that he doesn't think they are adding anything to the disclosure by requiring a separate deed notation and before they make any decisions they should run it by Town Counsel.

Mr. Carabetta said that he agrees with some of what Attorney Levine said but in the past the town has problems with who cleans detention basins. Attorney Levine said that is a little different story situation and in doing some research there are deeds in Great Woods that have wording about the detention basins in the deed.

Attorney Levine said that he was trying to say what the Commission is requiring adds nothing to informing the buyer of what's going on. He said if their intent is to prevent a buyer coming in and saying they were never told then maybe Town Counsel could advise them how to create what they want so people understand what is going on. Attorney Levine said the way they have it now doesn't help except in his pocket.

Mr. Carabetta said he would to start there and the members could be e-mailed the Orders of Condition and check some of Attorney Donahue's ideas and change the wording accordingly.

Attorney Levine said that he will record the Order of Conditions and he can record the Declaration of Restrictions at any time with the Commission permission. He said that it requires that it has to been recorded prior to any commencement of construction and Mr. Kane needs a variance because his previous variance approval expired.

Mr. Carabetta said that he thinks they should stick with what the Commission approved and record it because he would rather not go backwards at this point. Attorney Levine said that he will prepare that so Mr. Kane doesn't have to wait.

Mr. Jernstrom asked Attorney Levine if he could explain the difference of a Declaration of Restrictions and the Deed Restriction. He said with Mr. Kane's project all they are looking is placement of permanent limit of work markers and doesn't believe there is a detention basin issue for Mr. Kane. Attorney Levine said that buyers are not educated about what their obligations and agrees with Mr. Jernstrom. Mr. Jernstrom asked Attorney Levine said if the Commission doesn't do a Deed Notation how would the Commission address the issue of a permanent limit of work marker and how would the homeowner and potential new home owner down the road be aware that there is a restriction on their property. Attorney Levine said that he has an idea on how to do it but he thinks Town Council should advise them. Mr. Jernstrom said that in 310CMR it says that a deed restriction does need to be noted. Attorney Levine said when Attorney Donahue advises them there is a very simple way of correcting it and would rather that it comes from him and said that it's easier then they think. He said the difference between a Deed Restriction and Declaration of Restriction is that you don't have a deed in play because Mr. Kane owns the lot and if he is granted a variance he has to build within a year and once he completes that he will then sell and transfer the property. He said between the recordings of the Order of Conditions and eventually a sale there is no deed involved. He said to get that requirement they could put in the word deed notation or declaration of restrictions and if there wasn't a requirement have it done prior to commencement to construction then they could wait for a deed restriction.

There being no further discussion the Commission thanked Attorney Levine for his time

Certificates of Compliance for 8 Acorn Street, DEP 150-123 & 150-279

Ms. Macdonald said that the Certificates of Compliance for the DEP 150-123 approved in 1991 and 150-270 approved in 2001 for 8 Acorn Street were never issued Certificates of Compliance.

Mr. Jernstrom asked if they are going to do a site visit.

Ms. Macdonald said that she wasn't sure that would even be applicable currently because it has been some many years and there may be a lot of things that may be different.

Mr. Reich-Graefe asked why it is coming up now. Ms. Macdonald said probably because the current lawyer looked at the deed and in the past it was over looked when the property was sold.

Mr. Jernstrom said that he is not comfortable signing a Certificate of Compliance that he doesn't have a clue what they are signing it for.

Mr. Reich-Graefe said that he agrees with the old filings if they haven't been complied with in the past it's not the Commission's role to then just sign off on them with doing a site visit.

Mr. Zampiceni asked why if the filing from is 1991 are they is now requesting the Certificate of Compliance now? Ms. Macdonald said because they want to sell it and they need to close the Orders by issuing a Certificate of Compliance.

Mr. Arment explained to Mr. Zampiceni that the Orders were never signed off on and now the current Attorney is doing what he should be doing by closing the open Orders by requesting a Certificate of Compliance.

Mr. Carabetta said that the property could have been sold 3 or 4 times and it is finally picked up by an Attorney who does what he is supposed to do.

Mr. Jernstrom said that they still need to do a site visit and the Commission agreed to do it before their next meeting of September 28th at 5:30 p.m.

Miscellaneous

Mr. Jernstrom said that he had a couple of discussions through e-mail with Mr. Carabetta with regards to George Kingston who is an appointed, non-voting member of the Commission with regards to removing him from the e-mail list and doesn't understand why. Mr. Zampiceni said that he doesn't think he wants to do it. Mr. Jernstrom said that he absolutely has no problem whatsoever doing it.

Mr. Carabetta said that he thinks as a Commission they are more than capable handling what they need to. He said that the only way they are going to learn is if they go and do the research themselves. Mr. Carabetta said that there have been a couple of instances where he needed answers and has called Mr. Kingston.

Mr. Jernstrom said he doesn't see a problem with keeping Mr. Kingston informed and in his humble opinion Mr. Kingston has a better working knowledge of the Wetland's Protection Act then anybody on the Commission.

Ms. Macdonald said that he is trying to slow down and he doesn't mind if there is a problem or there is specific project that needs to be worked with he is more than willing. She said that Mr. Carabetta has a point how are they all going to learn if they are told by someone who decided to get off the Commission. Mr. Jernstrom said he attended the Open Space meeting along with Mr. Kingston & Ms. Macdonald and Mr. Kingston said that he had no problem with receiving e-mails.

Mr. Carabetta asked the Commission their thoughts.

Mr. Sheets said that he didn't feel it would hurt anything and to let Mr. Kingston make his own choice. He said that he doesn't feel a need for him to be at the meetings but again it's up to Mr. Kingston to decide.

Mr. Reich-Graefe said Mr. Kingston is a non-voting member of the Commission, correct. Mr. Jernstrom said yes he is and the Commission is very much encouraged by the DEP to keep Mr. Kingston in the loop. Mr. Reich-Graefe said the Commission at some point decided to make Mr. Kingston a non-voting member, right. Mr. Jernstrom said yes about a year ago.

The Commission agreed to add Mr. Kingston back on the e-mail list for the Conservation Commission.

Upon motion duly made by Craig Jernstrom and seconded by Rene Reich Graefe, the Commission voted to adjourn at 7:15 p.m.

For the Commission,

Craig Jernstrom, Clerk